December 5, 2022

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20004
ghgrfund@epa.gov

Dear Administrator Regan:

The Coalition for Green Capital ("Coalition") respectfully submits the following response to all questions in Sections 1 through 6 in the Request for information ("RFI"): Greenhouse Gas Reduction Fund ("GHGRF") – Docket ID No. EPA-HQ-OA-2022-0859. Through this response, we are providing recommendations regarding the Low-Income and Disadvantaged Communities Fund ("LIDC Fund") of $8 billion and the General Assistance Fund ("GA Fund") of $11.97 billion, except where specifically noted.

The Coalition[1] is a 501(c)(3) District of Columbia nonprofit corporation meeting all requirements to be an eligible recipient" for the purpose of seeking capitalization as a national green bank under Section 134. It does business as the American Green Bank Consortium ("Consortium"), a coalition of operating green banks, entities that are in the process of forming green banks, Community Development Financial Institutions ("CDFIs"), and mission-aligned partners.

President Biden has called for a reduction of 50% to 52% of greenhouse gas emissions by 2030. This goal can be met only by achieving substantial additional public-private investment in the energy sector as required by the GHGRF, particularly in low-income and disadvantaged communities. In its requirements and careful definitions, Section 134 shows how awards under this program can produce many multiples of investment greater than the appropriated sums. Moreover, this additional investment can and must be in low-income and disadvantaged communities.

[1] See the Coalition for Green Capital dba the American Green Bank Consortium website: https://coalitionforgreencapital.com/

In our responses, we present our reading of Section 134. We also suggest the requirements for application that we urge the Environmental Protection Agency to impose on any proposed "eligible recipient." Three themes run through all our responses:

- an "eligible recipient" must have an both economically viable business plan that involves partnering and leveraging with the private sector and a plan for how they intend to engage low-income and disadvantaged communities;
- any GA Fund and LIDC Fund grantee can only use the granted money for direct and indirect investment into "qualified projects"; and
- an "eligible recipient" must be designed, controlled, and governed specifically to meet the requirements and purpose of Section 134.

The Consortium welcomes the opportunity to work with EPA as well as the many organizations with valuable experience and growing interest in fulfilling the purpose of Section 134: Avoid and reduce emissions of greenhouse gases and other forms of air pollution while addressing environmental injustice in the most damaged communities of America.

Sincerely,

Reed Hundt
CEO and Chairman of the Board

Eli Hopson
COO and Executive Director

Oswaldo Acosta
Member of Board of Directors

Donnel Baird
Member of Board of Directors

Marla Blow
Member of Board of Directors

Carlos Curbelo
Member of Board of Directors

Roger Dower
Member of Board of Directors

Hugh Frater
Member of Board of Directors

Bryan Garcia
Member of Board of Directors

Richard Kauffman
Member of Board of Directors

Kenneth R. Marks
Member of Board of Directors

Kristina Peterson
Member of Board of Directors

Paul de Sa
Member of Board of Directors

Susan Tierney
Member of Board of Directors

Michael J. Gergen
Latham & Watkins LLP
Counsel to CGC

Kevin S. Minoli
Alston & Bird LLP
Counsel to CGC

Daniel C. Stiles
Stiles.Legal
Counsel to CGC

Robert M. Sussman
Sussman & Associates
Counsel to CGC

Attachments: RFI Filing Release
RFI Response
CGC Leadership

Coalition for Green Capital Files Comments With EPA on Capitalizing National Green Bank

National Green Bank Will Carry Out "Dual Mission" of Reducing Greenhouse Gas Emissions & Other Air Pollution and Redressing Environmental Injustice

Washington, DC – The Coalition for Green Capital (CGC) filed public comment today with the Environmental Protection Agency (EPA) in response to the agency's Request for Information (RFI) "seeking public comment on core design aspects of the Greenhouse Gas Reduction Fund (GHGRF)." In August, Congress added the GHGRF as a new section 134 to the Clean Air Act when it passed the *Inflation Reduction Act*.

"Congress gave EPA a unique, historic responsibility to avoid and reduce emissions of greenhouse gasses and other forms of air pollution and to redress climate and energy-related environmental injustice in low-income and disadvantaged communities," **writes CGC.** "President Biden has called for a reduction of 50% to 52% of greenhouse gas emissions by 2030. This goal can be met only by achieving substantial additional public-private investment in the energy sector as required by the GHGRF, particularly in low-income and disadvantaged communities."

CGC does business as the American Green Bank Consortium. In its 44 page filing it explained that it intends to seek capitalization as a national green bank drawing funds from the $11.970 billion appropriated for General Assistance under Section 134(a)(2) and the $8 billion for Low-Income and Disadvantaged Communities under Section 134(a)(3).

In its filing, CGC provided both a summary of the statute and responses to the discrete questions posed by the EPA in its RFI.

As set forth in detail in the filing, an "eligible recipient" for either of the two funds must be a national non-profit purposefully and exclusively designed for direct and indirect investing in the "qualified projects" defined in the statute. An entity with any other purpose does not pass the definitional bar of the statute. The "eligible recipient" cannot be controlled or managed by ineligible recipients, such as a deposit-taking entity or a privately funded entity.

The "eligible recipient" must have a viable business plan that ensures continued operations for many years to come. That plan must show how it will help EPA fulfill *both* the goals of greenhouse gas emissions and other air pollution reduction and environmental justice. The majority of the investment under the two funds should be in "low-income and disadvantaged

communities." EPA should define such communities in a unique, precise way to give guidance to all "eligible recipients," or alternatively should require such applicants to provide such precise definitions as will fit the purpose of addressing environmental injustice.
The "eligible recipient" must provide financial and technical support to an open network of other nonprofit investors, as well as investing directly itself. Both direct and indirect investing must exclusively be in "qualified projects." The direct investing must be prioritized to address financing the private sector would not otherwise provide.

The "qualified projects" include "any project, activity, or technology" that falls within two carefully defined categories:

"(A) reduces or avoids greenhouse gas emissions and other forms of air pollution in partnership with, and by leveraging investment from, the private sector, or (B) assists communities in the efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution."

CGC noted that congressional authors of the GHGRF have made its intent clear. On September 9, 2022, Senator Chris Van Hollen (D-MD), Senator Edward Markey (D-MA), and Representative Debbie Dingell (D-MI) wrote EPA Administrator Michael Regan urging him to use the GHGRF funding to capitalize "a single, independent, non-profit national climate bank that would maximize the leveraging of private capital investment, ensure the efficient distribution of funds within a growing green bank network and create opportunities for large scale, transformational investments — particularly in environmental justice communities."

"Understanding the plain reading, history and context of Section 134, EPA is now in a moment to design and define how the GHGRF can incorporate energy justice and environmental justice," **writes CGC.** "In championing the GHGRF the sponsors of the legislation have explained publicly that they envisioned the capitalization of a national green bank as the purpose of the legislation."

"Consortium members have in the aggregate invested more than $2 billion of their own funds in partnership with more than $7 billion from private sector investors to total more than $9 billion in investments," **writes CGC.** "The Consortium welcomes the opportunity to work with EPA as well as other organizations and institutions to meet the opportunity created by section 134: avoid and reduce emissions of greenhouse gasses and other forms of air pollution while addressing environmental injustice in the most damaged communities of America."

###

Introduction

With the Greenhouse Gas Reduction Fund ("GHGRF") added as a new Section 134 to the Clean Air Act ("CAA") in Section 60103 of the Inflation Reduction Act, Public Law 117-169, 136 Stat. 1818 (August 16, 2022), Congress gave EPA a unique, historic responsibility to avoid and reduce emissions of greenhouse gases and other forms of air pollution and to redress climate and energy-related environmental injustice in low-income and disadvantaged communities. The GHGRF also enables, again for the very first time, the capitalization of one or more national nonprofits designed specifically to maximize total investment "any project, activity, or technology that…reduces or avoids greenhouse gas emissions and other forms of air pollution" by investing "in partnership with, and by leveraging investment from, the private sector."

By the terms of Section 134, the "eligible recipient" as an applicant for direct funding must demonstrate that its business plan will make both direct and indirect investments in partnership with the private sector. The direct investing, which must be "at national, regional, State, and local levels," must be prioritized "in qualified projects that would otherwise lack access to financing" (Section 134(b)(1)(B)). Moreover, the eligible recipient must "retain, manage, recycle, and monetize all repayments and other revenue received from [investing] using grant funds…to ensure continued operability." In this way, the statute requires an award-winning applicant to continue to drive public-private investment during the long years needed for the battle against climate change and environmental injustice.

The statute divides the appropriated funds into three separate but very similar funding programs: the Zero Emissions Technology Fund ("ZET Fund"), the General Assistance Fund ("GA Fund"), and the Low-income and Disadvantaged Communities Fund ("LIDC Fund"). The three programs give EPA a once-in-a-generation opportunity that is best met by a prompt capitalization of a national green bank from the GA and LIDC funds designed, structured, governed, and monitored by EPA to achieve the critical, carefully defined purposes of Section 134. (We are not commenting here on the ZET Fund, Section 134(a)(1), except where specifically stated.)

The provisions of Section 60103 of the IRA, now codified as Section 134 of the CAA, inform the responses to all the questions included in the Request for Information ("RFI"). When considering the information received in response to the RFI and other outreach efforts and when making decisions about how to implement the GHGRF, EPA must be guided first and foremost by the language and intent of Section 134 as directed by Congress. For example, when awarding funds under the GHGRF, EPA must ensure that each recipient meets the express requirements in Section 134 to be considered an eligible recipient and can show it has a detailed plan to help EPA fulfill *both* the goals of greenhouse gas and pollution reduction and environmental justice.

The requirements to be an "eligible recipient" under any of the three different funds are the same. However, with respect to the LIDC Fund, the "eligible recipient" in both direct "financial assistance" and indirect "funding and technical assistance" must deliver said "financial and technical assistance in low-income and disadvantaged communities." Pursuant to the Justice40 policy of this Administration, the "eligible recipient" must show a similar geographic and demographic focus for its investment under the GA Fund. For the ZET Fund, the requirement is "to enable low-income and disadvantaged communities to

deploy or benefit from zero-emission technologies." Across all three funds, then, runs the mandate for EPA to require any "eligible recipient" to address environmental injustice by means of the other strictures of Section 134.

Read as a whole, the plain language of Section 134 explains why Senator Chris Van Hollen, Senator Ed Markey, and Congresswoman Debbie Dingell wrote to EPA Administrator on September 9, 2022, urging them to use the GHGRF funding to capitalize "a single, independent, non-profit national climate bank that would maximize the leveraging of private capital investment, ensure the efficient distribution of funds within a growing green bank network and create opportunities for large scale, transformational investments—particularly in environmental justice communities."[1]

Understanding the plain reading, history, and context of Section 134, EPA is now in a position to design and define how the GHGRF can incorporate energy justice and environmental justice.

We wish to alert you that the responses as a whole to some extent may be redundant. We erred in that direction to provide a complete response to the questions in the section. In light of our commitment to read and apply Section 134 throughout, we have included in Section 6 a stand-alone discussion of Section 134. For the sake of completeness, we added our press release concerning this filing as an appendix hereto.

Section 1: Low-Income and Disadvantaged Communities

1. **What should EPA consider when defining "low income" and "disadvantaged" communities for purposes of this program? What elements from existing definitions, criteria, screening tools, etc., - in federal programs or otherwise - should EPA consider when prioritizing low-income and disadvantaged communities for greenhouse gas and other air pollution reducing projects?**

How EPA defines "low-income and disadvantaged communities" is critical to shaping the business plans of eligible recipients for grants and for achieving the statutory purposes. As discussed in more detail below, that definition must include considerations of the pollution burden historically imposed on communities and the disproportionate energy burden low-income communities have borne and will continue to face. We urge EPA to require eligible recipients to show in detail how they will cause both direct and indirect investment in such communities for the majority of the GHGRF awards.

For direct investment as defined in Section 134(b)(1), Congress required that the eligible recipient "prioritize investment in qualified projects that would otherwise lack access to financing." Historically, the financial sector has not provided fair and equal access to financing

[1] Full letter can be found at: https://coalitionforgreencapital.com/key-senators-congresswoman-call-on-epa-to-capitalize-a-national-climate-bank/

for racial minorities and low-income communities. Therefore, EPA should direct applicants to identify how they will determine what "qualified projects" should be prioritized on the grounds that financing is lacking. In that explanation, an applicant should specify the obstacles to conventional financing that must be overcome, such as ownership by or location in a low-income or disadvantaged community, and how to overcome those challenges.

For indirect investment as detailed in section 134(b)(2), Congress included a wide range of local and community financing entities "including community- and low-income-focused lenders and capital providers" as potential intermediaries that can receive "funding and technical assistance" from the eligible recipient. In light of the specific geographic and demographic focus of the LIDC Fund and the applicability of the Justice40 policy to the GA Fund, EPA should require eligible recipients to describe how they will provide "funding and technical assistance" to all the possible types of intermediaries in which indirect investments can be made generally and, in particular, "in low-income and disadvantaged communities." Applicants should also be required to show how they will provide relevant technical assistance in such communities.

The Biden Administration has repeatedly established a strong commitment to ensuring the prioritization of historically disadvantaged communities as a key factor in transitioning to a clean economy. In Section 219 of Executive Order 14008: Tackling the Climate Crisis at Home and Abroad, the Administration acknowledges: "To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern. That means investing and building a clean energy economy that creates well-paying union jobs, turning disadvantaged communities—historically marginalized and overburdened—into healthy, thriving communities, and undertaking robust actions to mitigate climate change while preparing for the impacts of climate change across rural, urban, and Tribal areas."

Additionally, in the Interim Implementation Guidance for the Justice40 Initiative Memo, the Administration outlines direction by the President for the Director of the Office of Management and Budget ("OMB"), the Chair of the Council on Environmental Quality ("CEQ"), and the National Climate Advisor in consultation with the White House Environmental Justice Advisory Council ("WHEJAC") to jointly publish guidance on how certain federal investments might be made toward a goal that 40% of the overall benefits of such investments flow to disadvantaged communities—the Justice40 Initiative. The Justice40 Initiative is acknowledged as a critical part of the Administration's whole-of-government approach to advancing environmental justice.

Finally, in September 2021, the Environmental Protection Agency released the report Climate Change and Social Vulnerability in the United States[2], which provided critical data-based context towards the urgency of ensuring that climate investments are prioritized for disadvantaged communities that have too long been overburdened with the realities to the climate crisis. The report analyzed six climate impacts, including Air Quality and Health; Extreme Temperature and Health; Extreme Temperature and Labor; Coastal Flooding and Traffic; Coastal Flooding and Property; and Inland Flooding and Property.

Community Definition

[2] https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf

To aid eligible recipients and give itself a more manageable task in awarding funds, EPA should provide a clear, consistent, and transparent definition of "low-income and disadvantaged communities." We recognize that several agencies and other entities within the federal government have already published definitions or standards for designating a community as "low-income" or "disadvantaged" under programs they administer and that many of those entities have built robust screening tools designed to help identify which communities are considered low-income or disadvantaged under the office's particular definitions. Definitions of "low-income" or "disadvantaged" that are generated for use in other federal programs or for different purposes are unlikely to be equally effective at identifying the communities that should be prioritized by an eligible recipient that receives funding under the GHGRF for investments, funding, and technical assistance. As a result, we do not recommend EPA wholly adopt any "off-the-shelf" definitions for these key terms. In particular, EPA should not use definitions—or the resulting classifications—used in the context of determining the geographic boundary in which a community-based financial institution may operate, as those definitions do not include any consideration of environmental burdens. There is no basis in Section 134 for eliminating consideration of environmental impacts when identifying those communities that should be prioritized for investment under the GHGRF.

At the same time, EPA need not launch a time-consuming effort to "recreate the wheel." Rather, EPA should define the subject geographic and demographic markets by combining those components or aspects of existing definitions that are particularly relevant to the GHGRF's purpose. For example, EPA should not adopt the entire definition of "disadvantaged community" relied on by the CEQ because it covers at least some communities that are not burdened by emissions of greenhouse gases, other forms of air pollution, or the production or combustion of fossil fuels.[3] However, some aspects of the CEQ definition focus on identifying communities that are burdened by emissions of greenhouse gases, other forms of air pollution, or the production or combustion of fossil fuels. EPA can also incorporate relevant aspects of the agency's EJ Screen tool, and the Department of Energy's ("DOE") Priority Energy Communities methods.[4] These existing efforts to define environmental damage, low income, and historic underinvestment can serve EPA in deciding the direction of grant funds.

When borrowing from existing definitions to identify which communities GHGRF grant recipients should prioritize, however, EPA should look only to those definitions that are designed to identify communities that are disadvantaged in ways that the GHGRF is intended to address. Definitions or tools that are not based on environmental considerations—and more precisely not based on consideration of impacts from greenhouse gases; other forms of air pollution; or the production, delivery, and use of energy from fossil fuels—will generate results that are not tailored to addressing the GHGRF's purpose. For example, Census tracts can misdirect investments pursuant to Section 134 because this measurement divides larger communities into multiple Census tracts and combines smaller communities with neighboring communities. Both these features can obscure the location of "low-income and disadvantaged communities." Nor should EPA define the boundaries of communities solely using constructs such as an investment

[3] Such as the 84 communities labeled as disadvantaged that exceed the environmental burden threshold for wastewater discharges only. *See* "Communities list data" file, available at https://static-data-screeningtool.geoplatform.gov/data-versions/1.0/data/score/downloadable/1.0-communities.xlsx

area or targeted population as the criteria used by the Department of Treasury's Community Development Financial Institutions Fund ("CDFI Fund") to determine if a CDFI will serve a "Target Market." As noted above, income and financial metrics alone also will miss the mark, because they do not consider the energy and environmental burdens faced by communities.

If EPA decides not to identify precisely the geographic and demographic markets meeting the definition of "low-income and disadvantaged communities," then the agency must require eligible recipients to identify with specificity the "communities" where they propose to provide directly "financial assistance" and indirectly "funding and technical assistance" consistent with Section 134(b) of the CAA (Use of Funds) or the precise measures and metrics that the eligible recipient will use to identify those communities when implementing the grant. Great specificity will permit EPA to discern the differences among competing applications. It then can give greater value to applications that serve the statutory purposes to the maximum degree. Specifically, in the event EPA depends on eligible recipients for the definitions, then it should require them to address the following:

- **Definitions of disadvantaged communities they will target and the reasoning behind their definitions**

EPA should require each applicant to identify the variables it will use to define and prioritize disadvantaged communities. In making these definitions, eligible recipients must simultaneously consider environmental, economic, and social factors and how these factors relate to one another and the purpose of the GHGRF. Definitions that prioritize only one type of variable (economic, social, or environmental) without addressing the needs created by the others should be rejected.

- **Specific priority geographies and reasoning behind those priorities**

In many environmental justice hotspots and frontline areas, communities have been and are disproportionately impacted by local factors such as particulate air pollution from industrial processes, vehicles, or fossil fuel production and combustion. Eligible recipients should identify the characteristics of hotspots they plan to address through their investment strategy. They should explain how their strategy will both remedy the specific environmental problems and support the economic development of surrounding communities.

- **Anticipated environmental, health, and energy impacts in target communities**

Eligible recipients should identify the specific environmental and energy benefits they plan to deliver in discrete geographic and demographic markets. For example, when addressing energy burdens, eligible recipients should assess the specific sources of energy burden in the communities and explain how their business plan will benefit members of the community. Eligible recipients should identify specific health issues arising from greenhouse gas emissions and air pollution and then show how they mitigate adverse experiences currently suffered in the relevant communities.

- **Intended GHG and air pollution reductions**

Eligible recipients should explain the specific sources of greenhouse gas emissions and other forms of air pollution in the selected communities they intend to address and how they intend to

abate them by means of "rapid deployment of low- and zero-emission products, technologies, and services." EPA should reject applications that fail to articulate a well-thought-through strategy identifying the specific "products, technologies, and services"—a requirement that specifically means all three measures must be utilized for the purpose of Section 134 to be realized.

- **Second-order GHG emissions impacts**

EPA will be aware that investment may reduce GHG emissions in one location but redistribute them elsewhere. For example, a building electrification project might reduce GHG emissions on-site but cause a new electrical load at a nearby fossil fuel-fired electric generating unit that emits GHGs and other forms of air pollution for the surrounding community. Eligible recipients should explain to EPA where their activities might create new electrical loads, the impacts of such loads on greenhouse gas emissions and air pollution, and how they plan to address both potential increases in emissions and air pollution in those areas. They should also explain how they plan to protect communities that could suffer harm from increased electricity production expected to result from their investment strategies.

- **Justice40**

EPA should apply Justice40 goals to its assessment of the merits of applications under the GA Fund. To this end, the same definition of "community" used for the LIDC Fund should be applied to the GA Fund.

2. What kinds of technical and/or financial assistance should the Greenhouse Gas Reduction Fund grants facilitate to ensure that low-income and disadvantaged communities can participate in and benefit from the program?

First, any grant made under either the GA Fund or the LIDC Fund must facilitate both direct and indirect investment into qualified projects, as Congress used mandatory language in both Sections 134(b)(1) and (b)(2). In addition, grants made under the LIDC Fund must facilitate both the direct and the indirect investment into qualified projects *in low income and disadvantaged communities only*.

Second, both direct "financial assistance" and indirect "funding and technical assistance" must be made in the context of a "qualified project." Section 134(b)(1)(A) requires an eligible recipient to provide financial assistance to "qualified projects" at the national, regional, State, and local levels," while Section 134(b)(2) requires an eligible recipient to provide funding and technical assistance to "entities that provide financial assistance to qualified projects at the State, local, territorial, or Tribal level or in the District of Columbia."

As a threshold matter, all "qualified projects" must be a "project, activity, or technology." While those terms are broad, they are not limitless. Paying off an entity's pre-existing operational debts, for example, is unlikely to be a qualified project because it does not appear to be a "project, activity, or technology."

From the broad range of types of assistance that could constitute "any project, activity or technology," Congress authorized the use of grants made under the GHGRF for just two types. Section 134(c)(3) specifies that a qualified project must be a "project, activity, or technology" that:

- "(A) reduces or avoids greenhouse gas emissions and other forms of air pollution in partnership with, and by leveraging investment from, the private sector; or
- (B) assists communities in the efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution."

Ideally, an "eligible recipient" would demonstrate to EPA that its business plan integrates both types of "qualified projects." Considering the requirement that an "eligible recipient" invest both directly and indirectly, support new and existing intermediaries, recycle funds, "ensure continued operability," and otherwise meet all the statutory mandates, it is difficult to imagine an applicant presenting a coherent business plan that does not integrate and aim at both types of "qualified project."

In any event, the community assistance category requires an applicant to show exactly how it proposes to aid communities "*in the efforts of those communities* to reduce or avoid greenhouse gas emissions and other forms of air pollution" Section 134(c)(3)(B) (emphasis added). As drafted by Congress, this provision empowers communities to be the ones to decide what efforts they want to take to reduce emissions, and it requires an eligible recipient to support the efforts chosen by the community. By drafting it this way, Congress was clear that the obligation on eligible recipients is not simply to spend money in low-income and disadvantaged communities but to use grant funds to invest in the communities themselves.

To ensure that low-income and disadvantaged communities are able to fully participate in and benefit from the GHGRF, EPA should rely on Section 134(c)(3)(B) to distinguish between applications that propose to use grant funds to increase the amount of business the applicant or members of its network will do within low-income and disadvantaged communities that they already serve and applications that propose to increase the amount of funding available for low-income and disadvantaged communities to expand their businesses. EPA should require applicants to demonstrate how their proposal will ensure that the long-term value of the investment of GHGRF Funds will remain in and belong to the community and not the eligible recipient or its members. Other laudable assistance or worthwhile community efforts—such as general economic development projects—do not fulfill the requirements of Section 134.

In connection with all financial assistance, the applicant should be obliged to show how it will:

- "prioritize investment in qualified projects that would otherwise lack access to financing" (Section 134(b)(1)(B));
- "recycle and monetize" the "fees, interest, repaid loans" and other revenue generated from qualified projects (Section 134 (b)(1)(C)); and
- "ensure continued operability" (Section 134(b)(1)(C)).

In short, the LIDC recipient cannot primarily or even mostly engage in non-remunerative "financial assistance and technical assistance" without violating the conditions of Section 134(b)(1). To comply with this law, EPA must require eligible recipients for awards from the GA Fund and the LIDC Fund to show how their business model serves the relevant communities, leverages the private sector, promotes only "qualified projects" (and not some other product or service, however laudable), and will be self-sustaining economically over time.

3. What kinds of technical and/or financial assistance should the Greenhouse Gas Reduction Fund grants facilitate to support and/or prioritize businesses owned or led by members of low-income or disadvantaged communities?

The second category of "qualified projects" —Community Assistance—permits directly "financial assistance," (b)(1)(A), and indirectly "funding and technical assistance," (b)(2), to be provided to businesses owned or led by members of low-income or disadvantaged communities. Such assistance can include equity, grants, training, and other techniques that "assist" the businesses "owned or led by members of low-income or disadvantaged communities" in aiding the "efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution."

Lending and other support to businesses must be limited to the narrowly defined "efforts." That is how Section 134's purpose differs from other government programs aimed at promoting more general economic development in "low-income or disadvantaged communities."

EPA should require eligible recipients to describe in detail the forms of "assistance" to "businesses owned or led by members of low-income or disadvantaged communities" that they intend to provide. The description must meet all other requirements of Section 134. It also should state objectives that comport with the purposes of Section 134, reporting techniques disclosing the extent such objectives will be met, and methods for addressing obstacles to achieving these objectives.

EPA should require applicants to submit a procurement policy that details the process the applicant will follow when using GHGRF funds to obtain goods and services and that specifies what, if any, actions the applicant intends to take to ensure that disadvantaged business enterprises, women-owned businesses, and veteran-owned businesses are aware of any procurement opportunity and have a meaningful opportunity to apply and compete for any procurement contracts.

Section 2. Program Design

1. What should EPA consider in the design of the program to ensure Greenhouse Gas Reduction Fund grants facilitate high private-sector leverage (i.e., each dollar of federal funding mobilizes additional private funding)?

EPA correctly identifies the importance of using the GHGRF grant funds to increase total investment. We estimate that to meet President Biden's emissions goal at least $1 trillion must be invested in the next decade in addition to what the private sector otherwise will cause. We estimate further that "low-income and disadvantaged communities" need at least $200 billion of this additional investment. EPA should call for eligible recipients to explain in detail how they will fill these investment gaps. That is why the objective of "high private-sector leverage" is absolutely required in the design of the program and the requirements imposed by EPA on eligible recipients.

In championing the GHGRF, the sponsors of the legislation have explained publicly that they envision the capitalization of a national green bank as the purpose of the legislation. Therefore, EPA should require eligible recipients to show how either through a national green bank or in some other way they will utilize efficiently conventional, prudent banking tools. These must include at least the following across a portfolio of investments:

- "Mobilize" private sector investors to partner in financing specific qualified projects,
- Cause the private sector to purchase debt and other assets aggregated by the "eligible recipient,"
- Obtain loans from the private sector at favorable rates, and
- Attract new private sector financing into the relevant product and geographic markets.

Eligible recipients that do not propose to capitalize, organize, manage, and execute with such tools through a national green bank should explain in detail how they will operate otherwise to 'facilitate high private-sector leverage."

Here follows a summary of questions relating to "leverage" that we suggest EPA require eligible recipients to answer in detail:

- ***Explain financing competence and plans:*** Eligible recipients should specify how they will safely and effectively leverage funds and obtain lines of credit to comply with Section 134(b)(1)(C). In this regard, eligible recipients should show in detail how they have and how they will in the future recycle funds, and how they will partner with the private sector in investing in low and zero emission projects and products.[5]

- ***Show how "leverage" will be limited to statutory purpose.*** GHGRF funds can be used only for "qualified projects."[6] To this end, eligible recipients with organizational or institutional objectives that lie outside the scope of "qualified projects" should show how they would separately track the GHGRF Funds through recycling, partnering, and other financing to the statutory purpose. EPA should require eligible recipients that have balance sheets derived from other investment activity to demonstrate that they will not commingle or otherwise use GHGRF capital directly or indirectly to support investing in anything other than "qualified projects." For example, an applicant may not deposit GHGRF capital on its balance sheet, borrow against that capital, and then use anything less than all that capital to invest in

[5] 42 USC 7434 paragraph b (1)C
[6] Qualified projects as defined by Section 134 42 USC 7434 paragraph c (3)

"qualified projects." This restriction applies to investing by indirect recipients as well. Section 134 is aimed exclusively at increasing (and then monitoring) investing to "qualified projects."

- ***Demonstrate a plan for positive returns overall.*** Positive returns on an entire portfolio are essential for an "eligible recipient" to maintain continued operability over time as required by Section 134.[7] Therefore, EPA should ask eligible recipients to explain how they will obtain net positive returns, whether they intend to grow capital, and how they will maximize "leverage" generally and in "low-income and disadvantaged communities" over at least a 10-year period. In this explanation, they should address in detail how they intend to balance any nonremunerative provision of services and grants to indirect recipients and communities with the imperative to be operationally sustainable and to grow capital to achieve the greenhouse gas and pollution reduction generally and specifically in low-income and disadvantaged communities. This is particularly important to enable entities that are not yet ready to receive before September 30, 2024 (when all funds must be obligated) to become indirect recipients in the future. Section 134(b)(2) requires the "eligible recipient" to "provide funding and technical assistance to establish new or existing" members of an indirect investing network. Eligible recipients will be unable to expand that network to "new" members or continue to support "existing" members in future years if they do not "ensure continued operability."

- ***Provide details on public-private investing:*** EPA should require that eligible recipients explain in detail existing and proposed future plans to partner with private sector investors.[8] In doing so, they should identify, to the extent possible, the specific physical products and projects that they believe will involve partners, based on their capabilities and future business plans.

- ***Show competence in recycling and partnering:*** EPA should ask eligible recipients to show how their board and management team have recycled funds for investments that fall within the scope of "qualified projects" and how they partnered with private sector investors for such specific projects. EPA should not rely on recycling and partnering for other types of projects as satisfactory evidence of track record or future plans suitable for receiving funds as an "eligible recipient." Investing in "qualified projects" is the relevant expertise. In this connection, to the extent available, eligible recipients should report on historical default rate, average interest rates, and rates of adoption of "qualified projects" ("any project, activity, or technology that (A) reduces or avoids greenhouse gas emissions and other forms of air pollution in partnership with, and by leveraging investment from, the private sector"). Eligible recipients with scant experience in driving the adoption of "qualified projects" should explain how they propose to gain the skills necessary to invest at optimal speed and volume in the projects and products composing the clean power platform. Eligible recipients that wish to focus only on assisting "communities in the efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution" will fail to show that they can meet the other requirements of the definition of "eligible recipient" such as the three direct investing activities under Use of Funds (b)(1) or the imperative of supporting an indirect network.

[7] As required by Section 134 42 USC 7434 paragraph b (1)C
[8] 42 USC 7434 paragraph b (1)

- ***Speed Matters:*** EPA should require eligible recipients to show how they intend to expedite private sector "leveraging." All else being equal, it is better to reduce emissions and pollution sooner rather than later from a global warming, pollution, and socio-economic point of view. Therefore, eligible recipients should explain their Day 1 and Year 1 plans for "mobilizing private funding."

2. What should EPA consider in the design of the program to ensure Greenhouse Gas Reduction Fund grants facilitate additionality (i.e., federal funding invests in projects that would have otherwise lacked access to financing)?

EPA is precisely right in insisting on a clear demonstration by eligible recipients that what they are proposing to accomplish in public-private investing would not have occurred but for the intervention of this nonprofit entity. Section 134 requires the "eligible recipient" to "prioritize investment in qualified projects that would otherwise lack access to financing." To meet this obligation, eligible recipients must explain how their investment activities have not and would not in the future compete with private sector lenders. As opposed to competing with or substituting for private sector investing, an applicant must act "in partnership with, and by leveraging investment from, the private sector" to comply with Section 134.

Closing racial gaps across lending opportunities could amount to an additional $5 trillion in gross domestic product for the United States over the next five years,[9] but adoption rates for "qualified projects" in "low-income and disadvantaged communities" have been low. EPA should ask eligible recipients how they propose to achieve "additionality" by accelerating adoption rates and thus reducing greenhouse gas emissions and other air pollution in these communities.

EPA should also require eligible recipients to explain how they will continue to show additionality on an ongoing basis. As the private sector invests more successfully in specific types of projects or drives adoption rates for "qualified projects" for certain markets, then the eligible recipient must refocus its investing on other projects, products, or geographic and demographic markets. EPA should require applicants to show how they would demonstrate continuous evolution of support and assistance as technologies mature and financing expertise in the private sector grows.

3. What should EPA consider in the design of the program to ensure that revenue from financial assistance provided using Greenhouse Gas Reduction Fund grants is recycled to ensure continued operability?

If the GHGRF grant funds were to go primarily to grants or low-return investments, then over time an "eligible recipient" could not meet the statutory requirement of "continued operability."[10] Moreover, total investment—both generally and in "low-income and disadvantaged communities"—would fall far short of what is possible and indeed necessary. Therefore, to comply with Section 134 and ensure achievement of the greenhouse gas and

[9] As noted in Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

[10] 42 USC 7434 paragraph b (1)

pollution reduction in low-income and disadvantaged communities, we ask EPA to request that eligible recipients articulate their plans for achieving positive net returns for their entire portfolio of investments, including both direct and indirect investments. EPA should also request details of business plans and financial models that ensure long-term operational sustainability of the fund. These detailed business plans should include plans for portfolio diversification, risk management, standardization, contracting processes, and revenue plans.

EPA should require all applicants to submit a Program Income Plan as part of the application. The scoring criteria for review of grant applications should include criteria for scoring the Program Income Plan based on the strength of the provisions of the Plan and the Plan's overall ability to support the continued operability of the grant activities without the need for additional investment of public funds. Applicants should be required to identify any impediments or limitations on their ability to use program income for continued operability of the grant-funded activity, such as existing legal, contractual, or fiduciary requirements to use revenue for the benefit of the existing owners or members of an entity.

Applicants that propose to provide funding to not-for-profit entities that are authorized only to serve a defined field of membership should be required to address how field of membership limitations could adversely impact the applicant's ability to recycle grant funds and ensure the continued operability of grant-funded activities. Such applicants should be required to address the disposition of unused grant funds and program income in the event that field of membership or geographic limitations on operations eliminate or significantly limit the ability of the entity to use funds to support qualified projects. EPA must ensure that there are sufficient protections in place to prevent the enrichment of individual or corporate owners of a not-for-profit entity from the use of grant funds or program income.

We suggest EPA require details on how the applicant will ensure its operability for at least one decade. The one-time capitalization of one or more "eligible recipient[s]" is meant to launch a prudently investing, long-term successful, national non-profit investing entity that can address the dual mission of avoiding climate crisis and causing a beneficial clean energy transition in "low-income and disadvantaged communities."

Pursuant to Section 134, an "eligible recipient" also must invest directly on "national, regional, State and local levels." It cannot, therefore, focus only on the "State and local levels." This requirement comports with the need to reduce greenhouse gas emissions and other pollutants everywhere in the country and with the need to focus on "low-income and disadvantaged communities" that are found in all states and regions.

In presenting a strategic plan for such mandatory national and regional direct investing, the "eligible recipient" should discuss a sectoral approach to investing. It must achieve a positive return on its entire portfolio, partner with private sector investors, recycle funds, and seek to avoid doing what the private sector would do on its own. Given these constraints, the applicant should explain on a national and regional level the sectors—including both product and geographic markets—in which it initially intends to invest.

4. **What should EPA consider in the design of the program to enable Greenhouse Gas Reduction Fund grants to facilitate broad private market capital formation for greenhouse gas and air pollution-reducing projects? How could Greenhouse Gas Reduction Fund grants help prove the "bankability" of financial structures that could then be replicated by private sector financial institutions?**

EPA is absolutely correct that in order to facilitate broad private market capital formation and increase total investment of the GHGRF, private capital markets must become substantially more committed to investing in greenhouse gas reduction and pollution projects as well as investing in low-income and disadvantaged communities. As the New York and Connecticut Green Banks have shown in practice, private sector investors look for reasonable returns, standardized financial products, guarantees against loss, and aggregated loans that can be securitized.[11] These attributes require nationally centralized decision-making for supporting a network of local and regional lenders. EPA should require eligible recipients to explain in detail what functions they propose to centralize in a national entity to expand "bankability."

EPA should ask eligible recipients to demonstrate how they have standardized financial products for their "qualified projects," how they intend to require network members to adopt such standardized financial products, and how they will encourage such standardization. Eligible recipients should explain how these plans apply exclusively to "qualified projects" and not to other types of nonprofit investing.

5. **Are there best practices in program design that EPA should consider to reduce burdens on applicants, grantees, and/or subrecipients (including borrowers)?**

EPA has correctly identified the need to "reduce burdens on applicants, grantees, and/or subrecipients." Eligible recipients should be required to identify such burdens and show how they will reduce them. They include at least the following measures that any applicant should be required to address. First, it should show how it will bear to the maximum degree feasible the costs to comply with necessary data-gathering, audits, and other monitoring of performance. Second, to support indirect investing, it should engage in efforts on national, regional, and local levels to increase efficiencies and lower costs for supply chains of "qualified projects." Third, it should address the myriad impediments to financing and deployment in energy markets, such as the soft costs of permitting and financing. EPA should require eligible recipients to explain in detail their plans for reducing all these "burdens."

A national green bank should be able to satisfy the most stringent of EPA monitoring and reporting requirements, not only as to its own direct investment but also on behalf of all members of the network of indirect lenders to which it has extended funding and technical support. Imposing that burden on each of the members of this network directly would multiply overhead costs. It would open the door to divergent methods of accounting, measuring, and reporting, which in turn would cause a lack of clarity and the inability to respond quickly to

[11] For example: New York Green Bank Impact Report: https://greenbank.ny.gov/Resources/Impact-Report and Connecticut Green Bank Financial Reports https://www.ctgreenbank.com/strategy-impact/reporting-transparency/

market changes. Any applicant that proposes to decentralize such systems should be required to explain how it can avoid multiplying the costs of such activities.[12]

Second, EPA should request that any eligible recipients explain how they would negotiate with original equipment manufacturers and distributors for the lowest unit cost supply contracts, timely delivery, and other supply chain efficiencies.

Third, product adoption and project formation have in the past occurred too slowly given the urgency of addressing both climate change and the greenhouse gas and pollution reduction in low-income and disadvantaged communities, namely, emissions and pollution reduction and investment in low-income and disadvantaged "low-income and disadvantaged communities." Project implementation delay is a burden that reduces leverage in all its dimensions and contributes to increased social and environmental damage. Eligible recipients therefore should be asked how they would expedite product marketing and adoption and project formation without incurring inappropriate risks or engendering possible waste, fraud, and abuse of funds.

In connection with all three activities, EPA should require eligible recipients to show how "technical assistance" for indirect investors will reduce burdens. It is critical that an "eligible recipient" not foster a network of indirect investors that are burdened by redundant, proliferating expenses among all members.

In addition, EPA should adopt a term and condition for any grant award made under the GHGRF that provides grant recipients with the same flexibilities regarding use of Program Income that are provided to recipients of EPA funding for revolving loan fund programs contained in 2 C.F.R. § 1500.8(d).

6. What, if any, common federal grant program design features should EPA consider or avoid to maximize the ability of eligible recipients and/or indirect recipients to leverage and recycle Greenhouse Gas Reduction Fund grants?

It is generally understood that emissions-reduction opportunities, markets for clean energy projects, and community needs vary by region and also change over time. Therefore, EPA should not automatically apply other federal grant program requirements to this unique federally funded program that Congress has created.

7. What should EPA consider in the design of the program, in addition to prevailing wage requirements in section 314 of the Clean Air Act, to encourage grantees and subrecipients to fund projects that create high-quality jobs and adhere to best practices for labor standards, consistent with guidance such as Executive Order 14063 on the Use of Project Labor Agreements and the Department of Labor's Good Jobs Principles?

Perhaps one of the most important goals of this program is to increase the availability of skilled workers for "qualified projects." The renewable power sector and other elements of the clean

[12] For example, in the healthcare sector, it is estimated that interventions such as standardizing reporting and reducing human resource duplication could save about 28% of total spending on healthcare annually. Savings such as this could directly fund additional project interventions and community-based jobs.

energy product market have a great need for worker training. EPA should require eligible recipients to show how they will address this problem both in connection with national direct investing and also for the benefit of indirect recipients of "funding and technical support."

Increasing wage levels should attract more workers to the product markets composing the clean power and clean energy transition. Higher wages will also benefit "low-income and disadvantaged communities. To this end, EPA should impose Davis-Bacon requirements to the degree applicable to relevant products and projects and consistent with the statutory requirement for "rapid deployment of low- and zero-emissions products, technologies and services." Where a standard for wages is lacking, the agency should ask eligible recipients how they propose to achieve the goal of reasonable pay for work done at the product and project levels. In addition to ensuring compliance with labor standards in Section 314 of the Clean Air Act (42 USC 7614), EPA should award bonus points in application evaluation to business plans that commit to labor agreements or community workforce agreements. EPA should require eligible recipients to explain how they propose to secure and manage project labor agreements. In this connection, EPA should require eligible recipients to show how they intend to ensure that project developers and operators pay wages that are consistent with prevailing wages and that adhere to the Department of Labor's Good Jobs Principles and how they intend to align with the apprenticeship programs supported under the tax credit provisions of the IRA.

As further explained in response to question 9 below, prevailing wage requirements and Good Jobs Principles also relate to supply chain management. Therefore, EPA should also require eligible recipients to describe how their supply chain management principles and procedures can ensure fiscal responsibility while also supporting prevailing wages and Good Jobs Principles.

In short, eligible recipients should be required to explain how they intend to support skills development, fair wages, and increased availability of workers both for the projects in which they intend to invest directly and for indirect investing.

8. What should EPA consider when developing program guidelines and policies, such as the appropriate collection of data, to ensure that greenhouse gas and air pollution reduction projects funded by grantees and subrecipients comply with the requirements of Title VI of the Civil Rights Act, which prohibits discrimination based on race, color, and national origin in programs and activities receiving federal financial assistance?

EPA should require eligible recipients to explain how they will comply with the full extent of Title VI. Moreover, eligible recipients should explain how they intend to recruit and maintain a diverse workforce for their own activities and encourage project developers and indirect recipients of "funding and technical support" to maintain a diverse workforce. Such diversity should include consideration of race, color, national origin, gender, regional location and skill sets.

As a condition of receiving funding under the GHGRF, EPA should require all eligible recipients, subrecipients, and program participants to agree in writing that they are subject to the provisions of Title VI and EPA's regulations implementing Title VI, including the general prohibition on discrimination contained at 40 C.F.R. § 7.30 and the specific prohibitions

contained in 40 C.F.R. §§ 7.35(a)−(c). EPA must clearly state that field of membership limitations do not exempt entities from any obligations under Title VI or EPA's regulations implementing Title VI, nor do they create any safe harbor from any administrative or judicial enforcement or legal liability that may result from a failure to comply with those obligations.

9. What should EPA consider when developing program policies and guidance to ensure that greenhouse gas and air pollution reduction projects funded by grantees and subrecipients comply with the requirements of the Build America, Buy America Act that requires domestic procurement of iron, steel, manufactured products, and construction material?

If fully capitalized, a national green bank will have adequate scale to partner with major actors to support domestic supply chains of iron, steel, manufactured products, and construction materials. For example, a national green bank could enter into supply or requirements contracts with domestic manufacturers and distributors. EPA should require eligible recipients to explain how they would engage in these national activities and to what extent and how they would comply with and support Build America, Buy America.

Eligible recipients also should explain whether and under what circumstances they believe EPA should allow waiver exemptions under categories such as (1) Environmental justice and other public interest concerns, (2) Nonavailability, and (3) Unreasonable Cost,[13] which serve to enable compliance while also ensuring projects are not prohibited from completion if domestically produced products are unable to be procured.

10. What federal, state, and/or local programs, including other programs included in the Inflation Reduction Act and the Infrastructure Investment and Jobs Act or "Bipartisan Infrastructure Law," could EPA consider when designing the Greenhouse Gas Reduction Fund? How could such programs complement the funding available through the Greenhouse Gas Reduction Fund?

EPA should require that eligible recipients show how they will align investments with at least the following programs and projects:

Inflation Reduction Act Additional Related Programs

- The ZET Fund, $7 billion, to make grants to states, municipalities, and Tribal governments to deploy or benefit from zero-emission technologies.
- Clean Energy Incentives for Individuals, Section 13302, extends tax credits for capital costs of qualified residential clean energy property expenditures, including a variety of zero-emission technologies.
- Energy Community Reinvestment, Section 50144, $5billion: To "retool, repower, repurpose, or replace energy infrastructure" or "enable operating energy infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases."

[13] Both the National Science Foundation and the Environmental Protection Agency have constructed similar waiver processes based on these three principles. https://beta.nsf.gov/funding/build-america-buy-america https://www.epa.gov/cwsrf/build-america-buy-america-baba

- Clean Heavy-Duty Vehicles, Section 60101, $1billion: Granting mechanism "to help replace dirty medium and heavy-duty vehicles with zero-emitting vehicles."
- Funding to Address Air Pollution at Schools, Section 60106, $50million: Granting mechanism "to monitor and reduce air pollution and greenhouse gas emissions at schools."
- Low Emissions Electricity Program, Section 60107, $87 million: Technical assistance and education programs for consumer-related groups, low-income, and disadvantaged communities, and others to reduce greenhouse gas emissions from electricity generation.
- Climate Pollution Reduction Grants, Section 60114, $5 billion: For a competitive grant program for state planning and implementation of greenhouse gas reduction programs.
- Environmental and Climate Justice Block Grants, Section 60201, $3 billion: To award grants "for environmentally-related activities that benefit disadvantaged communities."
- Energy Infrastructure Reinvestment Program, Section 50144, $5 billion and $250 billion in loan guarantees to "(1) retool, repower, repurpose, or replace energy infrastructure that has ceased operations; or (2) enable operating energy infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases."

Bipartisan Infrastructure Law

- Electric and Reduced Carbon Buses: $5 billion. State and local government entities and nonprofit entities that can arrange financing for sales eligible under this program are eligible receiving entities.[14]
- Pollution Prevention: $100 million for the Pollution Prevention Program.

11. Is guidance specific to Tribal and/or territorial governments necessary to implement the program? If so, what specific issues should such guidance address?

Yes. Consistent with the federal government's Trust Responsibility to Tribes and EPA's Tribal Consultation Policy, EPA must engage in government-to-government consultation with Tribal governments regarding the implementation of the GHGRF. In that consultation, EPA should seek input from Tribal governments directly about what guidance, financial assistance, and/or technical assistance is most needed for Tribal governments, organizations, and members to be able to fully participate in and benefit from any opportunities for direct and indirect investment, financial assistance, funding, and technical assistance. The guidance should specify that a Tribe's participation in or benefit from programs funded under the GA Fund and the LIDC Fund, in no way replaces, offsets, or reduces funding and other benefits the Tribe is eligible for under the ZET Fund.

EPA should then require that all direct eligible recipients for funding under the GA Fund or the LIDC Fund demonstrate how they will include "tribal and/or territorial governments" and/or designated representatives or consortiums of those entities in their distribution networks for indirect investment. The GHGRF requires that eligible recipients invest directly and indirectly at the national level. No plan should be considered national in scope if it does not include Tribal and territorial representation, including Puerto Rico.

[14] Clean School Bus Program, Office of Transportation and Air Quality, EPA-420-F-21-075 https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013NR1.pdf

EPA should be able to determine if choices in identifying "low-income and disadvantaged communities" disadvantage Tribes or territories and whether the applicant can cure any such issues in the implementation of any grant they receive. EPA should also require eligible recipients to disclose how Tribal and territorial entities are represented in governance or advisory committee structures that enable those voices to be heard.

In particular, EPA should require eligible recipients to describe how they will provide funding and technical assistance to Tribes and territorial governments that are interested in establishing a Tribal or territorial entity that will provide financial assistance to qualified projects. A national green bank would further support this mission by creating a single sustainable entity in which some Tribal and territorial governments that may need additional time to prepare to access the GHGRF could be provided with technical assistance. EPA should require applicants to explain how they would address this issue.

Section 3: Eligible Projects

1. **What types of projects should EPA prioritize under sections 134(a)(1)−(3), consistent with the statutory definition of "qualified projects" and "zero emissions technology" as well as the statute's direct and indirect investment provisions? Please describe how prioritizing such projects would:**
   (a) maximize greenhouse gas emission and air pollution reductions;
   (b) deliver benefits to low-income and disadvantaged communities;
   (c) enable investment in projects that would otherwise lack access to capital or financing;
   (d) recycle repayments and other revenue received from financial assistance provided using the grant funds to ensure continued operability; and
   (e) facilitate increased private sector investment.

EPA is correct to recognize that project and product selection are critical to achieving the dual mission of avoiding and reducing greenhouse gas and air pollution and redressing environmental injustice in low-income and disadvantaged communities. This dual mission requires an "eligible recipient" to demonstrate how it will select and deploy "qualified projects." That statutorily defined term includes "any project, activity, or technology" that does one or both of two things:

- (3)(A): "reduces or avoids greenhouse gas emissions and other forms of air pollution in partnership with, and by leveraging investment from, the private sector," or
- (3)(B): "assists communities in the efforts of those communities to reduce or avoid greenhouse gas emissions and other forms of air pollution."

With respect to (3)(A), EPA should establish the goal of achieving significant emissions and pollution reduction per dollar granted under both the General Assistance fund (GA) or the Low-Income and Disadvantaged Communities fund (LIDC). In the case of the former, pursuant to Justice40, EPA should cause eligible recipients to identify geographic and demographic targets. As to the latter, EPA should provide definitions of appropriate communities that are precise

enough for any direct or indirect recipient to know how to define both geographic and demographic markets for all investing and community assistance efforts.

For both the GA Fund and the LIDC Fund, the goal should be reducing emissions and pollution per granted dollar in the selected communities. This standard will cause eligible recipients to deliver the greatest amount of investment over a relevant time (such as 10 years). It will deliver the most benefits in terms of job creation and standard of living improvement (1b of this question), maximize investment that is truly additional to what would otherwise happen (1c), maximize recycling (1d), and cause the greatest amount of private sector investment (1e).

This objective will require applications to include business plans that define both what projects and what physical products eligible recipients intend to finance with funds awarded and how they will adjust projects and plans over time. These plans should show how the applicant proposes to adhere to the maximization objective. Comparing these plans and their expected outcomes should be critical to EPA's determination of how to award funds under the GA and LIDC.

With respect to (3)(B), the Community Assistance category, EPA should require eligible recipients to demonstrate with specificity and measurement methodologies a business plan that "assists" according to the same maximization objective. In short, community assistance must increase emissions and pollution reduction as opposed to achieving some other purpose, such as general economic development or affordable home mortgages.

We urge EPA to require eligible recipients to describe in their business plans not only the physical products and projects they intend to support but also the financial products they will use to cause marketplace adoption of the products and completion of the public-private finance essential to the projects. For example, the Consortium has learned from experience that several financial techniques can satisfy the maximization objective we recommend. These include loan loss reserves, credit rate buydown, secured and unsecured debt, and various forms of equity and quasi-equity. CGC has also learned that community assistance should include training developers and installers, partnering with local nonprofits (including CDCUs and CDFIs), marketing, sales promotion, and other cash outlays that only indirectly produce a return. Eligible recipients' business plans should include details on these topics.

We do not think EPA should "prioritize" the products, projects, and financing techniques. Instead, it should state the objectives and require eligible recipients to present business plans that describe how they will meet them. Any such business plan must meet the other requirements of Section 134, such as "continued operability" in Section 134(b)(1)(C). However, "operability" inevitably will be part of any reasonably long-run maximization of emissions and pollution reduction per dollar granted by Section 134.

To weigh the merits of an application and hold an applicant accountable for performance, EPA should require that the submitted business plan estimate results including at least the following: emission and pollution reduction, job creation, and standard of living improvement in "low-income and disadvantaged communities." Some physical products may improve a household's standard of living but accomplish little in terms of emission and pollution reduction. Some

projects might produce such reductions but be too costly to accord with the suggested maximization objective. An applicant should be required to explain its plan in these terms and to demonstrate also how it will report results.

Eligible recipients must engage in both direct and indirect investing.

With respect to direct investing, eligible recipients should present to EPA specific plans clarifying which sectors the applicant will initially focus on and significant steps in other sectors to "maximize greenhouse gas emission and air pollution reductions" by financing projects that would not otherwise be funded. In their applications, eligible recipients should show how their direct investing plans are intended to address the biggest sources of emissions and pollution not likely to be curtailed without the proposed intervention.

As to indirect investing, they must explain how they will enable indirect investors to drive rapid adoption of the specific physical products that compose the new clean power and clean energy platform that must underlie every community in the United States, including especially "low-income and disadvantaged communities."

2. Please describe what forms of financial assistance (e.g., subgrants, loans, or other forms of financial assistance) are necessary to fill financing gaps, enable investment, and accelerate deployment of such projects.

Public investment can partner with and obtain leverage from the private sector in multiple ways. For example, the Consortium has experience in issuing RFPs to solicit applications from private sector developers and investors. These methods have led to creative proposals from community actors. Also helpful have been information sessions and marketing efforts. Loan guarantees, first loss positions, and long-term debt are only some of the ways to close "financing gaps" to "enable investment" and "accelerate deployment." The EPA should ask eligible recipients to show what they have learned about such financial activities in the past and what they intend to propose to private sector partners.[15]

3. Beyond financial assistance for project financing what other supports—such as technical assistance—are necessary to accelerate deployment of such projects?

Section 134 mentions technical assistance in two forms: (1) technical assistance from the direct recipient to indirect recipients[16] and (2) assistance to communities.[17] These are related but distinct categories.

With respect to the first type of technical assistance, it is conventional to cite "training" as the type of assistance necessary for the direct recipient to provide to indirect recipients. However, the EPA should ask eligible recipients to explain more specifically:

[15] Financial assistance plans and applicant experience must be related to qualified projects only, thus related to efforts to reduce or avoid greenhouse gas emissions as is articulated in both type 1 and type 2 of qualified projects, noted in our response to Section 3 Question 1.
[16] 42 USC 7434 paragraph b (2)
[17] 42 USC 7434 paragraph c (3)B

- How their past training experiences have resulted in expanding investment in projects that reduce or avoid greenhouse gas emissions.
- How they plan to scale up training plans to incorporate hundreds or even thousands of indirect investing entities.
- What are the subjects and associated learning objectives of the training they plan to provide?
- What other forms of technical assistance beyond training do they plan to provide, including documenting method, scale, implementation, accounting, business management, engineering, technical evaluation, and future expectations?
- How will they collect data and measure the success of all technical assistance plans?

For assistance directly to communities, the EPA should require eligible recipients to submit stakeholder engagement and community engagement plans for how they will solicit feedback from and provide direct assistance to communities. More specifically, the EPA should ask eligible recipients to detail:

- What type of community assistance do they plan to provide?
- What are the planned communication methods, outreach tools, outcomes, and work plan the applicant intends to undertake?
- What history with community assistance related to the financing of projects that reduce or avoid greenhouse gas emissions and other forms of technology does the applicant have?
- How will they measure the success of their community assistance plans?
- How will they identify communities in need of assistance both now and into the future, considering shifting market needs and community preferences?
- How will they leverage partnerships to provide community assistance?

Section 4: Eligible Recipients

1. **Who could be eligible entities and/or indirect recipients under the Greenhouse Gas Reduction Fund consistent with statutory requirements specified in section 134 of the Clean Air Act? Please provide a description of these types of entities and references regarding the total capital deployed by such entities into greenhouse gas and air pollution reducing projects.**

The Coalition for Green Capital dba the American Green Bank Consortium ("Consortium") intends to apply for an award pursuant to both the General Assistance fund, (a)(2), and the Low-Income and Disadvantaged Community fund (a)(3), (GA and LIDC). It is a 501(c)(3) District of Columbia nonprofit corporation meeting all requirements to be an eligible recipient, as it will show. Consortium members have in the aggregate invested more than $2 billion of their own funds in partnership with more than $7 billion from private sector investors to total more than $9

billion in investments.[18] A good illustration of the "greenhouse gas and air pollution" reductions from such investments can be found in the annual report of the Connecticut Green Bank[19] and the evaluation framework used for those findings.[20]

Definition of "eligible recipient"

The "eligible recipient" definition, (c) (1), must be read along with Use of Funds (b) and Qualified Projects (c) (3) to complete the requirements an applicant must meet to apply for either GA or LIDC Funds.

To qualify as an "eligible recipient" any applicant must show that it is a nonprofit[21] that is (A):

- "designed to provide capital"
- "designed…to leverage private capital"
- "designed to…provide other forms of financial assistance"
- all for "the rapid deployment of low- and zero-emissions products, technologies, and services."

An applicant designed for some other purpose or purposes is simply not an "eligible recipient." In our view, the requirements of the text are only satisfied by a purpose-built nonprofit that will not only invest but also will "leverage private capital" to reduce emissions.

To be eligible the applicant must also show that it (B):

- takes no deposits except in the form of "repayments and other revenue received from financial assistance provided using grant funds under this section."

If it takes as deposits *other funds* it is not an "eligible recipient." If it takes as deposits "repayments" or "other revenue" from financing using *other grant funds* (i.e., not GA or LIDC Funds grants), then it is not eligible to apply for GA or LIDC Funds. If it takes as deposits revenue obtained from "deployment" of "products, technologies, and services" not exclusively limited to "low- and zero-emissions" objectives, then it is not "eligible." By the terms of Section 134, EPA cannot award grants that add to investing supported by other government programs.

Eligibility also requires that the applicant (C):

- Be funded by public or charitable contributions.

With respect to charitable contributions, if the applicant relies on this attribute, EPA should require it to prove it has been determined by the Internal Revenue Service to be an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 ("Code"), which is further classified as a public charity and to which donations are deductible as charitable contributions under Section 170 of the Code.

[18] https://greenbankconsortium.org/annual-industry-report
[19] https://www.ctgreenbank.com/wp-content/uploads/2021/12/FY21-annual-report-website.pdf
[20] https://www.ctgreenbank.com/wp-content/uploads/2017/02/CTGreenBank-Evaluation-Framework-July-2016.pdf
[21] Insert a definition and explain it is not a 'not for profit"

Finally, EPA should require an applicant to produce a business plan and method of organization that proves it (D):

- "invests in or finances projects alone or in conjunction with other investors."

This requirement makes clear the necessity that EPA capitalize the recipient, as opposed to investing itself directly in projects. These must be "qualified projects" within the scope of Section 134.

Use of Funds: Direct Investing

An "eligible recipient" can be funded only if it can show in its application that it will engage in both Direct Investment (b)(1) and Indirect Investment (b) (2).

With respect to an applicant's ability to engage in direct investment, EPA should require eligible recipients to demonstrate having the intent, plan, and capability to:

- "provide financial assistance to qualified projects…"

An applicant must assist financially *only* "qualified projects." If it financially assists other projects, no matter how meritorious, then it is not entitled to a grant under Section 134:

- "…at the "national, regional, State, and local levels."

A national reach is a requirement, not merely an option. Again, the Congressional history and this text shows Section 134 requires EPA to capitalize a national green bank to do direct investing. EPA may not fund an applicant that wishes to do direct investing only at "regional, State, and local" levels. Entities with those goals can be "indirectly" funded by a national green bank. (The structure of Section 134 reveals that EPA should not ignore the potential of regional, state, and local nonprofit investment institutions to fulfill Section 134's mission. They are not "eligible recipients," but they can be indirect recipients of national green bank "funding and technical support.")

Section 134 requires that in its direct investing the applicant must "prioritize investment in qualified projects that would otherwise lack access to financing" (1) (B). An applicant that competes with the private sector in financing cannot be an "eligible recipient." Instead of competing, it must partner with the private sector, since competition implies that the private sector would have provided financing. An applicant must show how it will "prioritize" this requirement of "additionality." We believe Congress inserted this requirement to make clear its intent that an eligible recipient drive public-private investment using GA and LIDC Fund grants and not just to promote public investment as is the purpose of some other statutes, including the ZET Fund.

The applicant also must (the word "and" means this is an additional requirement) "retain, manage, recycle, and monetize all repayments and other revenue received from fees, interest, repaid loans, and all other types of financial assistance using grant funds under this section to ensure continued operability."

This critical clause explains a major reason why EPA should capitalize an independent nonprofit national green bank. If funded at scale, it will be able to engage in all these financial methods to increase total investment over time. No government agency can recycle money in these ways.

EPA should require eligible recipients to describe in detail their capability and intentions for engaging in all (not just some) of these activities. Borrowing on a balance sheet, for example, does not adequately comply with this requirement. An applicant must also show how it will standardize, securitize, and otherwise optimally recycle funds.

The applicant must also show that it will not support these activities with funds other than "grant funds under this section" in these activities.

Finally, EPA must ask eligible recipients to show how they will "ensure continued operability." An applicant cannot seek funding, for example, primarily to engage in grants or other nonremunerative activities. It must continue to operate during the years and decades needed to complete the transition to the clean power platform in low-income and disadvantaged communities.

Use of Funds: Indirect Investing

To receive funds, an applicant also "shall provide funding and technical assistance to establish new or support existing public, quasi-public, not-for-profit, or nonprofit entities that provide financial assistance to qualified projects at the State, local, territorial, or Tribal level or in the District of Columbia, including community- and low-income-focused lenders and capital providers" (b) (2).

We urge EPA to interpret Section 134 as requiring, or at least to prioritize funding of, eligible recipients that have created and intend to continue to create "new" nonprofits engaged in "qualified projects."

In any case, EPA should require an applicant to show how it will provide "funding and technical assistance" to a national network of entities that in turn provide "financial assistance to qualified projects." We urge EPA to preclude or at least disfavor eligible recipients that propose to limit, confine, or otherwise create an exclusive network of such entities. An applicant that does not present a plan for managing and growing a national network should not be deemed an "eligible recipient."

Moreover, Section 134 requires that the indirect recipients provide "financial assistance" *only* to "qualified projects." An applicant that cannot limit indirect recipients to such uses of funds should not be an "eligible recipient." By limiting funding for indirect recipients to those projects that meet the definition of "qualified project," Congress intended for any "eligible recipient" to support a growing network of indirect recipients of "funding and technical assistance" for such projects.

Qualified Projects

An applicant can seek and use funds only for a "qualified project"—that is, "any project, activity, or technology that…reduces or avoids greenhouse gas emissions and other forms of air pollution." EPA should require the applicant to show how it will cause adoption of such "project, activity, or technology" by working "in partnership with, and by leveraging investment from, the private sector" as required under (c) (3) (A). An applicant also should show how it will use a "project, activity or technology" to "assist[s] communities in the efforts of those communities" to "reduce or avoid greenhouse gas emissions and other forms of air pollution" and to adopt such "project, activity, or technology."

An applicant proposing to support a "project, activity or technology" dedicated to some other principal purpose, such as general economic development, does not qualify as an "eligible recipient" under Section 134. An applicant proposing to make investments that are not "in partnership with" the private sector is not eligible to apply. An applicant that does not show how it will use an award to "leverage" funds from the private sector is not an "eligible recipient."

In light of the parallel language for the public-private category, (c)(3)(A) and the community assistance category, (c)(3)(B), we urge EPA to require that eligible recipients demonstrate how they propose to act with respect to both categories of "Qualified Projects."

"Eligible recipients, use of funds, and qualified projects" must be read together.

In sum, both to define who is eligible to apply for GA and LIDC Funds and to make grants, EPA should read the definitions of "eligible recipients," "use of funds," and "definitions" as an integrated whole. By reading the statute as a whole, EPA can implement the Congressional purpose of capitalizing a national green bank that:

- supports a "big green tent" of indirect recipients;
- does direct investing in emissions and pollution reduction in low-income and disadvantaged communities; and
- operates according to an economically sustainable business model.

2. What types of entities (as eligible recipients and/or indirect recipients) could enable Greenhouse Gas Reduction Fund grants to support investment and deployment of greenhouse gas and air pollution reducing projects in low-income and disadvantaged communities?

The need for "investment and deployment" in "low-income and disadvantaged communities" is vast—surely measured in hundreds of billions of dollars. Given the magnitude of the challenge, it is essential that to ensure scale, scope, and cost-reducing efficiency, it is best to fully capitalize a national green bank. By contrast, making multiple grants to smaller entities will inevitably reduce the total amount of investment needed to redress environmental injustice and emissions and air pollution reduction.

A purpose-built national green bank is ideal for full capitalization because its board, management, and skill sets will be focused on the mission of Section 134 as opposed to some other objective. Changing the direction and capability of an existing institution is one of the most difficult of all organizational challenges. Instead of hoping for such a transformation by an applicant seeking to be an "eligible recipient," EPA would be far more likely to achieve the goals of Section 134 by requiring a fully capitalized national green bank to support additional green investing by existing nonprofits that can add to their other objectives a component of investing in "qualified projects." To that end, eligible recipients should be required to show how grants, technical support, and other assistance can enable existing nonprofits to enter into green investing.

3. What types of entities (as eligible recipients and/or indirect recipients) could be created to enable Greenhouse Gas Reduction Fund grants to support investment in and deployment of greenhouse gas and air pollution reducing projects in communities where capacity to finance and deploy such projects does not currently exist?

As discussed above in 2.1, a national entity with funding sufficient to provide support for new entities over the next decade is critical for the support of new organizations that will not exist before September 30, 2024 (when all funds must be obligated) to become indirect recipients in the future. Section 134 requires the "eligible recipient" to "provide funding and technical assistance to establish new or existing" members of an indirect investing network. Eligible recipients will be unable to expand that network to "new" members or continue to support "existing" members in future years if they do not "ensure continued operability," and thus EPA should require applicants to describe in their business plan how to develop and support community capacity where none exists today.

4. How could EPA ensure the responsible implementation of the Greenhouse Gas Reduction Fund grants by new entities without a track record?

An "eligible recipient" should be able to demonstrate with clear and convincing evidence that it meets the statutory requirements and is fully capable of achieving the objectives set out by Section 134 and its own business plan. If it is truly a "new entity without a track record," it must still show the capability to execute on the plan it proposes to EPA. As to indirect recipients that might newly wish to obtain "funding and technical assistance" from a direct recipient, the EPA should require the "eligible recipient" to explain in its application how it will enable a new entrant to fulfill the statutory mission.

5. What kinds of technical and/or financial assistance could Greenhouse Gas Reduction Fund grants facilitate to maximize investment in and deployment of greenhouse gas and air pollution reducing projects by existing and/or new eligible recipients and/or indirect recipients?

Technical assistance may consist of many types of activities, including, but not limited to, marketing, branding, software, and training. Most importantly, such assistance must be truly

responsive to the local community's needs and burdens. The EPA should therefore require eligible recipients to show how they would work with local actors, conduct market assessments, engage with legislators and administrators, and reach out to businesses and residents.

Financial assistance to indirect recipients will come in many forms, including grants, lines of credit, equity deposits, acquisition of financial instruments, and other activities characteristic of an institution engaged in the recycling required of an eligible recipient by the statute.

Section 5: Oversight and Reporting

1. **What types of governance structures, reporting requirements and audit requirements (consistent with applicable federal regulations) should EPA consider requiring of direct and indirect recipients of Greenhouse Gas Reduction Fund grants to ensure the responsible implementation and oversight of grantee/subrecipient operations and financial assistance activities?**

The EPA has rightly identified governance as critical to determining whether an applicant is an "eligible recipient" and, if it is, whether its application is meritorious. Governance must be substantively established as opposed to being merely a matter of form.

Section 134 excludes any for-profit, deposit-taking, or not-for-profit entities from the scope of "eligible recipient." In order to give full meaning to the Congressional intent, EPA should also bar such excluded entities from creating mere paperwork fronts of nonprofits that are created to pass funds through to the excluded entities.

The requirements for meeting the definition of "eligible recipient" each can be satisfied only by appropriate "governance structures, reporting requirements and audit requirements." These requirements are ongoing. An applicant cannot merely be in compliance at the time of the application but instead must remain continuously in compliance during the entire term of the grant it seeks. Here are the four requirements that require governance, reporting, and auditing:

- To be "eligible," the nonprofit must be "designed" to "provide capital, leverage private capital, and provide other forms of financial assistance for the rapid deployment of low- and zero-emission products, technologies, and services." To comply with this provision, an applicant must show the EPA that it is "designed" by charter, history, organization structure, management expertise, and board composition to fulfill these mandatory functions. A nonprofit "designed" for some other purpose, however laudable and consistent with other statutory authorities, does not meet this requirement. For example, a nonprofit with the primary purpose of investing in general economic development is not an "eligible recipient" under Section 134, although it can be an indirect recipient of "funding and technical support." Governance structures must be disclosed to assess whether an applicant complies with this provision.

- Nonprofits that take deposits are excluded from the definition of "eligible recipient." This provision bars credit unions, or organizations that derive their funds from credit unions, from applying directly. EPA should not permit as an "eligible recipient" the creation of a mere paperwork construct that is in effect a front for an entity that cannot qualify as an "eligible recipient." An "eligible recipient" must have a board, charter, by-laws, proposed management team, business plan, financial plan and capability to fulfill all the requirements of Section 134. No mere paper shell of a nonprofit founded and controlled by entities ineligible to apply or unqualified to deserve a grant can be advanced as an appropriate "eligible recipient."

- To be "eligible," the nonprofit can be funded only by "public or charitable contributions." It cannot be funded, therefore, by the private sector to any degree. Section 134 clearly calls for the "eligible recipient" to partner with the private sector as opposed to being a subsidiary, affiliate, or entity in any way supported by the private sector. To comply with this provision, eligible recipients should explain to EPA how they are currently funded. If they claim to rely on "charitable contributions," then they must also prove their status as 501(c)(3) certified charitable organizations. Governance and reporting must comply with the regulations concerning such status.

- A nonprofit seeking to be deemed "eligible" must explain to EPA how its governance, reporting and auditing practices and processes will enable it to "invest[s] in or finance[s] projects alone or in conjunction with other investors." EPA should interpret the word "projects" to mean "qualified projects." Governance, reporting, and auditing suitable, for example, to small business lending in general will not necessarily serve the carefully defined purposes of Section 134.

The "Use of Funds" strictures of Section 134 require a unique set of skills and experiences for the board, advisory boards, and management teams. The EPA should require eligible recipients to explain in detail how the use of the funds, national scope, the mandate of directly and indirectly investing, the imperative of addressing "low-income and disadvantaged communities," and the narrow focus of "qualified projects" all will be reflected in its detailed operating plan. An applicant that has historically pursued investing for other purposes, no matter how worthy, should be obliged to explain how it proposes to meet the obligations that the GHGRF imposes on any "eligible recipient."

EPA should require any applicant to demonstrate in its "governance structures" and its "reporting" compliance with diversity goals in the dimensions of race, ethnicity, national origin, gender, regional location, partisan affiliation, and skill set, at a minimum.

Congress wanted to guarantee, and the EPA should confirm, that the applicant for direct receipt of a GHGRF grant is truly independent of government. The applicant's "governance structures" must manifest such independence. For this reason, eligible recipients are not "eligible" if their regulation or governance indicates support by any other government funding program or implies a guarantee that government would fulfill its obligations in the event of default. Independence from the federal government assures that the national direct recipient is not backed by the full

faith and credit of the United States either explicitly or by an implication perceived in the market.[22]

EPA should state the reporting and audit requirements that will be required of direct and indirect recipients and call for eligible recipients to provide adequate detail demonstrating how they will comply with the requirements. Eligible recipients should explain their safety and soundness policies for asset management – including at least credit underwriting, portfolio diversification, loss reserve requirements, internal controls, cybersecurity and other necessary functions suitable to managing substantial capital.

EPA can incorporate reporting and auditing requirements established by some other federal agency or department, but it should not delegate responsibility for implementing and overseeing operation of the GHGRF to some other agency. No other agency has the experience or the continuing role of assuring that the eligible recipients for funds are committed to combatting climate change and redressing environmental injustice.

We urge that EPA either dictate its requirements or ask eligible recipients to propose how they would address the following issues through reporting and auditing:

- Showing how direct and indirect investing is confined to "qualified projects"
- Providing for contractual relationships between the direct recipient and indirect recipients of "funding and technical assistance"
- Reporting the status of creating "new" indirect recipients
- Reporting on standardization, securitization, and recycling
- Reporting on partnerships with private sector investors
- Demonstrating "operability" on an ongoing basis
- Tracking "funding and technical assistance" to indirect recipients
- Accounting for community assistance
- Managing risk
- Monitoring and reporting on reductions and avoidance of "greenhouse gas emissions and other forms of air pollution" through both direct and indirect investing
- Reporting on overhead, including compensation and benefits for employees
- Assessing performance against objectives for "rapid deployment of low- and zero-emission products, technologies and services"
- Reporting on job creation, health benefits, training results, and other benefits for "low-income and disadvantaged communities"
- Producing beneficial impact on wages
- Allowing for changes in strategy and tactics as circumstances change
- Ensuring mitigation of conflicts of interest

2. Are there any compliance requirements in addition to those provided for in Federal statutes or regulations (e.g., requirements related to administering federal grant funds) that EPA should consider when designing the program?

[22] H.R. 2, Moving Forward Act, 116th Congress, Section 1622 paragraph c

In addition to the requirements of existing statutes and regulation, we encourage the EPA to consider how it will enforce the commitments made in applications. Either the EPA should articulate an enforcement mechanism, or it should ask eligible recipients how they propose to enable EPA to enforce such commitments as may necessarily be required to comply with Section 134. As mandated, noncompliance should continue to be subject to action under 2 CFR § 200.339.

EPA should consider the applicability of the EPA Financial Assistance Conflict of Interest Policy[23] to applicants, subrecipients, and program participants that propose only to provide grant-funded benefits to members of a particular organization. EPA should include a term and condition in any grant award made under the GHGRF that prohibits an applicant, subrecipient, or program participant from limiting the availability of grant-supported financial assistance, technical assistance, funding, or the benefits thereof to individuals or entities that pay membership dues or other compulsory payments to any applicant, subrecipient, program participant, or affiliate thereof. EPA must include a term and condition in any grant award made under the GHGRF specifying that membership in an organization, association, consortium, or other entity cannot be a prerequisite for being eligible for any grant fund-supported financial assistance, technical assistance, funding, or benefits thereof or for participating in or enjoying the benefits of any qualified project.

Applicants that propose to provide funding to not-for-profit entities that are owned by the members of the entity must be required to address the actual conflict of interest or appearance thereof that arises when the not-for-profit proposes to make grant-funded services or benefits available only to the owners of the not-for-profit or to prioritize or create an advantage for the owners. Finally, as noted in the response to Question 3 in Section 2, EPA must ensure that there are sufficient protections in place to prevent the enrichment of individual or corporate owners of a not-for-profit entity from the use of grant funds or program income during the period or performance for the grant or any time thereafter.

3. What metrics and indicators should EPA use to track relevant program outcomes including but not limited to (a) reductions in greenhouse gas emissions or air pollution, (b) allocation of benefits to low-income and disadvantaged communities, (c) private-sector leverage and project additionality, (d) number of greenhouse gas and air pollution reduction projects funded and (f) distribution of projects at the national, regional, state, and local levels?

EPA is right to apprehend that new "metrics and indicators" are needed to combat climate change and air pollution while investing in "low-income and disadvantaged communities." Any applicant should be required to describe in detail the "metrics and indicators" it proposes. What is not measured tends not to be done. Only what is measured can be both examined and learned from.

After more than a decade of consideration and demonstration, green banking has shown that at the very least, each and every project investment and all product selection should be

[23] https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy

accompanied by expected outcomes in terms of emissions reductions, return on investment, job creation, leverage, recycling, and other community benefits. EPA should require all eligible recipients to show how their experience in participating in project development and in establishing metrics for outcomes will serve the statutory purposes. This showing should be made with respect to all project finance and all product selection.

In addition, as the question correctly suggests, the EPA should require eligible recipients to show how they will measure the number and location of public-private investments both for direct and indirect investing. The reports should cover not only projects but also marketing and installation of products meeting the definition of "qualified projects." Such data-gathering is routine for both competent investment firms and product companies. EPA should ask eligible recipients to show how they will embrace and extend such methods to indirect recipients.

Section 134 requires leverage and prioritization of projects not otherwise likely to be funded. To ensure that these necessary obligations are met, EPA should require eligible recipients to produce measurement and monitoring techniques that demonstrate how much "leverage" of all the types discussed in detail in Section 2 they are obtaining. They also should report on their "prioritization" of projects the private sector was not otherwise funding.

The EPA should require the applicant to show how they will report both direct and indirect investing at the national, regional, state, and local levels. In doing so, it should report on the number of projects, households, and small businesses benefiting from the fund.

4. **What should EPA consider in the design of the program to ensure community accountability for projects funded directly or indirectly by the Greenhouse Gas Reduction Fund? What, if any, existing governance structures, assessment criteria (e.g., the Community Development Financial Institutions Fund's Target Market Accountability criteria), rules, etc., should EPA consider?**

In light of the dual mission of greenhouse gas and pollution reduction in low-income and disadvantaged communities, EPA should require that eligible recipients explain how they intend to report on community interaction and participation. EPA should place on eligible recipients the obligation to report on community interaction and participation. Such reporting must include explanations of safeguards against waste, fraud, and abuse of funds. Eligible recipients must show they understand their duties and have rigorous methods to satisfy them. In this way, stakeholder engagement will be mandated and routinized over time. EPA should ensure that this requirement comports with the formal Administration guidance for Justice40-covered programs.[24]

EPA should require eligible recipients to discuss in detail how they will enable residents and businesses in "low-income and disadvantaged communities," the public, Congress, and the agency to assess community assistance activities. Community efforts must be linked to reductions or avoidance of "greenhouse gas emissions and other forms of air pollution."

[24] Memorandum from Shalanda Young, Acting Director OMB, July 20,2021 https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf

Moreover, any and all direct and indirect recipients of the $20 billion in funding[25] should be acting in coordination with the states, municipalities, and Tribal entities receiving funds under 42 USC 7434 paragraph a (1). Applications should contain substantial detail relating to all these topics.

EPA should inform eligible recipients that "low-income and disadvantaged communities" may overlap with but are not identical to investment areas and target populations currently served by CDFIs.[26] The latter may include some "low-income and disadvantaged communities," but LIDC Funds and Justice40 in application to GA Funds both require exclusive focus on "low-income and disadvantaged communities."[27] Current CDFI target market criteria may miss the critical components of addressing environmental injustice and emissions reductions.

Section 6: Other Comments

The structure of the Request for Information (RFI) is necessary to assist EPA in constructing the Request for Proposals, and we have responded to the individual sections fully and undoubtedly with some redundancy. We have included references to specific provisions of new Section 134 of the Clean Air Act (the "CAA"), as added to the CAA by Section 60103 (Greenhouse Gas Reduction Fund ("GHGRF")) of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (the "IRA").

To provide a holistic overview of the key requirements of Section 134 of the CAA, as found in Section 60103 of the IRA, we provide this integrated explication of Section 134.

At a high level, Section 134(a) of the CAA (Appropriations) appropriates funding for grants for (1) Zero-Emission Technologies ("ZET Fund") − $7 billion; (2) General Assistance ("GA Fund") − $11.97 billion; and (3) Low-Income and Disadvantaged Communities ("LIDC Fund") − $8 billion. Section 134(a) also appropriates $30 million to EPA for administrative costs necessary to carry out activities under Section 134. Next, Section 134(b) (Use of Funds), directs how an "eligible recipient" that receives grant funds pursuant to Section 134(a) shall use such grant funds. Finally, Section 134(c) (Definitions), defines key terms, including "eligible recipient" and "qualified project."

Section 134(a) – Appropriations

In Section 134(a), Congress directed that the funds appropriated for grants for ZET be made available to "States, municipalities, Tribal governments" and "eligible recipients." ZET grant funds are to be used for "grants, loans, or other forms of financial assistance, as well as technical

[25] The funding specified in 42 USC 7434 paragraphs a (2) and a (2)
[26] See Community Development Financial Institutions Fund Target Market Assessment Methodologies 87 FR 63852. https://www.federalregister.gov/documents/2022/10/20/2022-22767/community-development-financial-institutions-fund-cdfi-target-market-assessment-methodologies
[27] Statute 42 USC 7434 paragraph a (3) further discussed in our response to Section 1.

assistance," specifically "to enable low-income and disadvantaged communities to deploy or benefit from zero-emission technologies." These technologies must produce zero emissions of "any air pollutant" and "any greenhouse gas." The technologies must do both, not either/or. These "technologies" specifically include "distributed technologies on residential rooftops." The recipient of funds may also "carry out other greenhouse gas emission reduction activities" as the Administrator determines, but a recipient must enable "communities to deploy or benefit from zero-emission technologies."

In Section 134(a), Congress directed that the funds appropriated for grants for GA funds are to be granted "to eligible recipients for the purpose of providing financial assistance and technical assistance in accordance with subsection (b)." At the same time, in Section 134(a), Congress directed that funds appropriated for the LIDC Fund are to be granted "eligible recipients for the purposes of providing financial and technical assistance in low-income and disadvantaged communities in accordance with subsection (b)."[28]

Section 134(c) – Definitions – "Eligible Recipient" and "Qualified Project"

"Eligible Recipient"

Under Section 134(c), an "eligible recipient" must satisfy each and every one of the following requirements:

- It is a nonprofit organization.

- It "is designed to provide capital, leverage private capital, and provide other forms of financial assistance for the rapid deployment of low- and zero-emission products, technologies and services". An "eligible recipient" cannot have been formed, designed, structured, managed, or governed for any purpose or mission other than this. While entities lacking this focused purpose or mission by definition cannot be an "eligible recipient," they can be indirect recipients of grant funds awarded to an eligible recipient, as discussed below.

- It "does not take deposits other than deposits from repayments and other revenue received from financial assistance provided using grant funds under this section." At bottom, this means that a financial institution, whether a commercial depository bank, a credit union, or a CDFI that takes deposits, cannot be an "eligible recipient." The GHGRF is not to be used to provide GA and LIDC Fund grants directly to financial institutions using or relying on funds from other federal sources, such as federally insured or otherwise federally funded depository institutions to ensure that GA and LIDC Fund grants are not used to reduce or retire the insurance payments, loans, loan guarantees, or other financial obligations such depository institutions owe to their federal insurers or other source of federal funding. The GHGRF is not to provide GA and LIDC Fund grants directly to such entities because their primary focus

[28] Accordingly, the requirements imposed under Sections 134(b) (Use of Funds) and 134(c) (Definitions) apply equally as to what types of entities are eligible to apply for GA and LIDC Funds from the GHGRF as an "eligible recipient" and how they must use those grant funds (although the financial and technical assistance provided pursuant to the LIDC Fund must be "in low-income and disadvantaged communities").

and mission is and should be prudent fiscal management of their federally insured or otherwise federally funded deposits. As such, GA and LIDC Fund grants are intended to create or support unique, special purpose and mission-focused direct recipients—namely, green banks.

- It must be "funded by public or charitable contributions." Unless it relies exclusively on "public" contributions, it must be a 501(c)(3) organization, contributions to which are deductible as charitable contributions under Section 170 of the Code.

- It "invests in or finances projects alone or in conjunction with other investors."

Qualified Project

Under Section 134(c), a "qualified project" includes "any project, activity, or technology" that reduces or avoids [GHG] emissions and other forms of air pollution" either (A) "in partnership with, and by leveraging investment from, the private sector," or (B) "assists communities in the efforts of those communities" to do so. Accordingly, under (A), an eligible recipient can and should act in partnership with, and leverage private investment from, the private sector. It cannot simply be the sole investment source for a qualified project using GA and LIDC Fund grants and said same qualified project cannot be financed using only public funds (regardless of the source of those public funds), nor can an eligible recipient use the subject funds for some purpose other than the reduction or avoidance of greenhouse gas emissions and other forms of air pollution. A building may be constructed in a manner to reduce or avoid greenhouse gas emissions or other forms of air pollution, consistent with the definition of a "qualified project," but only the activities or technologies that directly contribute to such reduction or avoidance would constitute a "qualified project" for purposes of the GHGRF.

This provision aligns the GA and LIDC Fund grants with the policy of public-private investing for emissions and pollution reduction. In other legislation and, indeed, in Section 134 with respect to public entities' use of ZET funds, Congress may allow public funds to be used alone to achieve defined goals. That is not the case for an "eligible recipient" seeking a grant under Section 134.

In addition, funds granted under Section 134 cannot be used for other purposes, however worthy. For example, a building may be constructed in a manner to reduce or avoid greenhouse gas emissions or other forms of air pollution, but only the activities or technologies that directly contribute to such reduction or avoidance can be financed with GHGRF funds. The rest of the financing of such a building does not meet the definition of "qualified project."

At the same time, under (B), an eligible recipient can and should be able to assist communities in the efforts to reduce GHG emissions and other forms of air pollution. In doing so, it must support "efforts" by "communities." It cannot simply invest GA or LIDC Fund grants in or for the benefit of a community. It must use those grant funds to assist the "efforts" of "communities" themselves for emissions and pollution reduction, as opposed to other important purposes.

Section 134(b) – Use of Funds – Direct Investment and Indirect Investment

Section 134(b) mandates that an eligible recipient that receives a grant pursuant to Section 134(a) "shall" use the grant to make "direct investments" and "indirect investments" as directed in subsections (b)(1) and (b)(2). The requirements on the use of funds by an eligible recipient to make such direct investments and indirect investments are exacting and nondiscretionary. An eligible recipient must make both direct investments and indirect investments as directed in subsections (b)(1) and (b)(2). An entity seeking to be an eligible recipient cannot propose to make only one of these two types of investments. It must show it has the plan, design, and capability to engage in both.

Direct Investment

Section 134(b)(1) provides that for indirect investments "the eligible recipient" shall:

"(A) provide financial assistance to qualified projects at the national, regional, State, and local levels;"

"(B) prioritize investment in qualified projects that would otherwise lack access to financing;" and

"(C) retain, manage, recycle, and monetize all repayments and other revenue received from fees, interest, repaid loans and all other types of financial assistance using grant funds under this section to ensure continued operability."

Subsection (b)(1)(A) requires that an eligible recipient must be ready, able, and willing to provide "financial assistance" to qualified projects at the national, regional, state, and local levels. It cannot "provide financial assistance" solely at one or only some subset of the four specified levels. Congress recognized that the problems the GA and LIDC Fund grants are intended to address may not be limited in geographic scope and may require financial assistance for qualified projects at the national and regional levels. Moreover, "financial assistance" is not the same as "funding," as discussed below in more detail.

Subsection (b)(1)(B), in turn, requires that an eligible recipient prioritize investment in qualified projects that otherwise cannot access private sector financing. Congress did not intend for GA and LIDC Fund grants to supplant or displace private-sector financing in qualified projects. Moreover, this provision can and should be read to further require that investments in qualified projects using GA and LIDC Fund grants are prioritized to be directed toward those qualified projects for which the necessary private sector financing in such projects would not have happened absent investment by the eligible recipient.

Finally, subsection (b)(1)(C) requires that an eligible recipient must be ready, willing, and able to engage in each of the activities specified therein to ensure its continued operability. Congress chose to specify a nonprofit organization as an eligible recipient because it can, if properly structured, engage in each and all of these specified sustaining activities, e.g., recycling of funds. Entities that cannot do so—and thus, cannot use the GA and LIDC Fund grants as directed by Congress, even if they are nonprofits—cannot be provided such grant funds as an eligible recipient and thus should be precluded from applying directly for such funds (although they

could still be a recipient of such funds provided by an eligible recipient in compliance with this Use of Funds requirement).

Furthermore, an eligible recipient must engage in these specified sustaining activities by using the "grant funds under this section." An eligible recipient cannot meet these requirements by engaging in the specified sustaining activities with regard to some other funds to which it may have access. For example, it cannot recycle other funds but neglect to recycle GA and LIDC Fund grants. Congress wanted a dedicated, purpose-built, focused national green bank to be recycling its direct investments.

Moreover, Subsection (b)(1)(C) can and should be read to require that an eligible recipient show that it has a business plan that will "ensure continued operability" above and beyond the required use of the specified sustaining activities. For example, not only should it show that it has a plan to employ recycling but that it also has a plan to avoid undertaking non-remunerative or risky activities that might threaten its continued operability. The business plan should also show that the eligible recipient does not and will not depend on other sources of funding to cover its losses and keep it in continued operation. A viable national green bank can not only sustain but actually multiply the initial one-time capitalization under GA and LIDC Fund grants many times over during the years and decades required to avoid or reduce GHG emissions and other forms of air pollution at scale.

Indirect Investment

Section 134(b)(2) provides that for indirect investments, "the eligible recipient shall provide funding and technical assistance to establish new or support existing public, quasi-public, not-for-profit, or nonprofit entities that provide financial assistance to qualified projects at the State, local, territorial or Tribal level or in the District of Columbia, including community- and low-income-focused lenders and capital providers."

At bottom, this subsection requires an eligible recipient to provide "funding and technical assistance" to entities that are at the subnational and subregional levels and thus not themselves capable of being an eligible recipient. This language means that an eligible recipient can make indirect investments in the form of grants to indirect recipients at the subnational and subregional levels, as opposed to only investing in qualified projects along with indirect recipients as part of its direct investing activities. Congress chose the word "funding" under Subsection (b)(1)(B) for indirect investments to be contrasted with the term "financial assistance" under Subsection (b)(1)(A) for direct investments. The eligible recipient also must provide "technical assistance" to indirect recipients. The Congressional purpose was to require the eligible recipient to create and support a national network of non-commercial lenders. It is to be a "big tent." That is why the scope of potential indirect recipients is broadly cast to include new and existing public, quasi-public, not-for-profit, and nonprofit entities, and specifically includes community- and low-income-focused lenders and capital providers. The eligible recipient cannot exclude such indirect recipients from participating in a national network—from coming under the big tent.

The indirect recipients are then to provide "financial assistance to qualified projects." This is similar to the direct recipient's mandate for direct investing, but there is no requirement to

“prioritize” for what the market is not otherwise doing or to “recycle etc.” Nor are the indirect recipients asked to invest at the national or regional levels.

Subsection (b)(2) can and should be read to further require that an eligible recipient show that it has a business plan under which it will operate a national or regional network that will serve as a big tent open to all types of entities specified therein.

This summary of the entire statute reflects the text itself. It is supported by testimony in a Senate hearing, statements by sponsoring Senators and Congresspersons, and the history of previously enacted versions of Section 134 in the House. We respectfully suggest that by capitalizing a national green bank in a timely manner, EPA can comply with Section 134 and fulfill its purposes in the best possible way.

Coalition for Green Capital

Board of Directors

Oswaldo Acosta, President & CEO, City First Enterprises
Acosta joined City First Enterprises in early 2019, bringing his lending, project finance, and entrepreneurial experience to lead the organization's efforts in advancing the region's economic development agenda. Since then, Acosta has led the design and implementation of the strategic expansion of CFE activities to new investment categories, including clean energy, small business, and residential mortgage lending.

Donnel Baird, Founder, BlocPower
Baird is the founder of BlocPower, a startup that markets, finances, and installs solar and energy efficiency technology to help houses of worship, non-profits, small businesses, and multifamily projects to slash their energy costs. Baird managed a national Change to Win/LIUNA campaign to leverage Dept. of Energy energy efficiency financing to create green construction jobs for out-of-work populations.

Marla Blow, President & COO, Skoll Foundation
Blow is the President and COO of the Skoll Foundation, an organization that seeks to catalyze transformational social change by investing in, connecting, and championing social entrepreneurs and other social innovators who advance bold and equitable solutions. Previously, Blow was North America lead at the Mastercard Center for Inclusive Growth, and was Founder and CEO of FS Card Inc., a subprime credit card venture.

The Honorable Carlos Curbelo, Principal, Vocero LLC
Curbelo currently leads Vocero LLC, a communications and public affairs firm, and previously served in the House of Representatives from 2015 to 2019 for the 26th Congressional District of Florida. In Congress, Curbelo was consistently ranked one of the most bipartisan Members of Congress and led on difficult issues including climate policy, immigration, gun reform, and tax policy.

Paul de Sa, Founder, Quadra Partners

De Sa is a co-founder of Quadra Partners. Previously, de Sa was on the leadership team at the FCC from 2009-12 and 2016-17, serving as Chief of its Office of Strategic Planning, focusing on merger reviews, broadband, and spectrum policy. De Sa also participated in writing the U.S. National Broadband Plan. Between his two periods of government service, de Sa was the senior analyst at Bernstein Research covering the US telecom sector.

Hugh Frater, Former CEO, Fannie Mae

Frater was CEO of Fannie Mae until April 2022 and previously, served as interim CEO and as a member of Fannie Mae's board since 2016. Frater currently serves as non-executive chairman of the board of VEREIT, Inc. Frater previously led Berkadia Commercial Mortgage LLC, a national commercial real estate company providing comprehensive capital solutions and investment sales advisory and research services for multifamily and commercial properties.

Roger Dower, President Of The Johnson Foundation At Wingspread

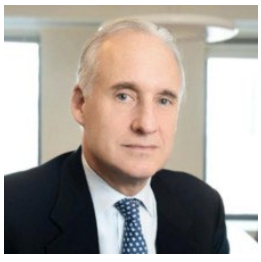
Dower's career spans more than thirty years, including senior management roles in the public, private and non-profit sectors focused on environmental and energy matters. An economist by training, Dower directed research at the Environmental Law Institute before serving as Economic Consultant to the White House during the Carter Administration then Chief of the Energy and Environmental Unit in the Congressional Budget Office during the Reagan Administration.

Bryan Garcia, President & CEO, Connecticut Green Bank

Garcia is the president and CEO of the Connecticut Green Bank – the nation's first state-level green bank. Before joining the Green Bank, Garcia was program director for the Yale Center for Business and the Environment. At Yale, Garcia led efforts to develop a leading global program responsible for preparing environmental leaders for business and society.

Reed Hundt, Co-Founder, CEO & Chairman, Coalition for Green Capital

Hundt is co-founder, Chairman and CEO of the Coalition for Green Capital. Hundt was chairman of the Federal Communications Commission (FCC) from 1993-97. Since 1997 Hundt has advised several venture capital and private equity firms and served on more than two dozen for-profit and not-for-profit boards and commissions, including 19 years on the board of Intel Corporation (2001-20) and seven years on the board of the Connecticut Green Bank.



Richard Kauffman, Chair Of Generate Capital

Kauffman is the chair of Generate Capital and the inaugural Chairman of Energy and Finance for New York, leading the state's clean energy vision, including the creation of New York State's $1 billion Green Bank, the nation's largest. Kauffman previously served as a Senior Advisor to Energy Secretary Steven Chu and as CEO of Good Energies, Inc., a leading investor in clean energy and energy-efficient technology.

Ken Marks, President, KRM Energy

Marks is a senior banker with broad financial experience in the power, utility and renewables sector. Most recently, Mr. Marks served as Managing Director and Head of Power, Utilities and Renewables for the Americas for HSBC. At HSBC, Marks was responsible for leading investment banking and commercial banking activities.

Kristina Peterson, CEO, Mayflower Partners

Peterson is the CEO of Mayflower Partners. Previously, Peterson has led various solar energy investment companies, serving most recently in senior M&A and investment, development, operations and asset management roles at Brookfield Renewable Partners (NYSE:BEP) and Terraform Power (NASDAQ: TERP). Peterson has also served as CEO, CFO, and other senior management positions at EDF Renewable Energy, Suntech, and Greenwood Energy.

Susan Tierney, Senior Advisor, The Analysis Group; Director, World Resources Institute

Tierney is a leading energy policy analyst currently serving as senior advisor at the Analysis Group. Tierney chairs the Board of ClimateWorks Foundation and the Board of Resources for the Future and as a director of the World Resources Institute and the Energy Foundation. Tierney previously served as Assistant Secretary for Policy in the United States Department of Energy under President Bill Clinton.

Leadership

Eli Hopson, COO & Executive Director, Coalition for Green Capital

Hopson previously was CEO of the DC Green Bank, where he led the strategic and operational implementation of DC Green Bank's programs and fostered relationships with key partners and stakeholders. Under his leadership, DC Green Bank developed its first financial offerings, established strategic relationships, and explored opportunities to realize the District's ambitious Clean Energy goals.